

**Pre-Bid Conference
April 2, 2009
Questions and Answers
RFQ #700-08-701**

Siting, Transmission, and Environmental Protection Peak Workload

Q1. How does the Disabled Veterans Business Enterprise (DVBE) Incentive Program work? Is the incentive percentage applied to the total points possible or to the Firm's score?

A 1. If a Firm agrees to DVBE participation of 3% - 4.99%, the Firm will receive bonus points to its score equal to 1% of the Firm's base score. If a Firm agrees to DVBE participation of 5% or more, the Firm will receive bonus points to its score equal to 2% of the Firm's base score. The Firm's base score is the weighted points earned by the Firm under scoring criteria 1 – 10 plus the scoring of potential conflicts of interest.

For example, suppose a Firm earns 800 weighted points from the scoring criteria 1 – 10 and 60 weighted points from the scoring of potential conflicts of interest. The Firm's base score would be 860 weighted points. If the Firm agrees to DVBE participation of 3% - 4.99%, the Firm will receive 8.6 DVBE incentive points based on 1% of its base score of 860 points. If the Firm agrees to DVBE participation of 5% or more, the Firm will receive 17.2 DVBE incentive points based on 2% of its base score.

Note that the table at the bottom of page 47 of the RFQ incorrectly states that Firms agreeing to 3% - 3.99% DVBE participation will receive the 1% DVBE incentive. The table should have stated that Firms agreeing to 3% - 4.99% DVBE participation will receive the 1% DVBE incentive.

Q2. Does the Target Area Contract Performance Act, Enterprise Zone Act and Local Agency Military Base Recovery Area criteria apply to subcontractors?

A2. No, this preference program does not apply to subcontractors. Bidders are responsible for completing the preference program forms, but subcontractors can help a Bidder meet some of the requirements. For example, service contracts for over \$100,000 must have 90% of the labor hours performed in the preference program area. A subcontractor in one of the areas can help meet this requirement. However, Bidders have the ultimate responsibility for ensuring that all preference program requirements are met.

Q3. With the size of the contract and the number of applications pending, is the Energy Commission considering hiring more than one team?

A3. The Energy Commission's intends to contract with one team.

- Q4. Based on my experience, the Energy Commission's Conflict of Interest (COI) rule is more restrictive than the COI rules of both the CA Public Utilities Commission (CPUC) and the Federal Energy Regulatory Commission (FERC). These two agencies oversee regulated monopolies and have highly visible public trust and environmental missions.**

Both the CPUC and FERC allow consulting firms to prepare technical reviews and CEQA and NEPA review documents on their jurisdictional projects, regardless of whether the consulting firm works for other utilities on similar jurisdictional projects. Obviously, they do not allow a consultant to review their own application work and I believe the CPUC restricts a consulting firm from reviewing an application filed by a utility for whom it works on other projects. FERC does not have this latter restriction.

In my opinion, the Commission's COI rule eliminates from the CEC's pool of professionals those who have the most environmental and technical experience in thermal generation and transmission. It also assumes that more stringent measures are needed than is the norm for agencies like CPUC and FERC.

Can this COI rule be modified for this solicitation, at least for subcontractors to a prime? The subconsultants could be subject to a COI rule similar to the CPUC or the FERC, so they would not review applications where they may have a conflict. If the rule stands, would the inclusion of a subcontractor with ongoing ties to developers make the team ineligible to submit an SOQ or score lower?

- A4. The COI rules for this solicitation, unlike prior solicitations, do not disqualify a bidder if one or more proposed team members are under contract with one or more developers who have an application pending before the Energy Commission or are planning to file an application with the Energy Commission. (RFQ, "Rule 1: Eligibility," p. 28.) Having such a team member, however, could affect the bidder's score depending on whether an alternative team member would be available to work on a project in question. (RFQ, "Scoring Criteria: Potential for Conflicts of Interest Affecting Availability," p. 29.) The COI contract provisions for this solicitation have also been slightly modified to allow a subcontractor to complete work for a developer under an existing contract, for example, one that has been identified in the proposal. (RFQ, para. C, p. 31.) But the contract provisions will not allow subcontractors, for the duration of the contract from this solicitation, to enter into new contracts or working relationships with anyone who has a pending application, or is planning to file one, with the Energy Commission. (RFQ, para. C, p. 31.) To clarify the introductory paragraph on page 27, consistent with the eligibility rule and the contract terms contained in this solicitation, paragraph A on page 27 is revised to read:*

The Energy Commission has determined that it is inappropriate for it to contract with a team that continues to enter into new contracts or working relationships with a developer who is submitting to the Energy Commission an Application for Certification for an energy facility or an application to designate a Transmission Corridor Zone ("TC Zone").

The previous RFQ from 2005 did not allow firms working for developers to participate on a team submitting an SOQ for the siting portion of the work. Staff reviewed the previous RFQ COI requirements prior to releasing the current RFQ and modified the RFQ to allow prime contractor and subcontractor firms that works for developers with applications

under review, or pending review, by the Energy Commission to participate on a team submitting an SOQ. However, under the new COI contract rules, if the firm is part of the winning team, it will not be allowed to enter into new contracts or working relationships with any such developers for the duration of the contract. Further, a subcontractor will have to have severed all ties with a developer for one year before it may take on assignments to review applications submitted by the developer. Under no circumstances may a firm review an application that it prepared. These rules may be more restrictive than those of other public agencies, but an important distinction justifying the restrictions is the fact that the selected team will be representing the Commission staff in application proceedings where the staff is an independent party. The Commission staff's independence and objectivity are of paramount importance in carrying out its responsibilities for reviewing applications for certification or corridor designation. Moreover, the number of expected cases is such that the availability of team members to work where needed, free of potential conflicts, is also of high priority. Finally, the Commission staff seeks to avoid potential conflicts that could serve to undermine or discredit the staff's case in a given proceeding.

All team characteristics being otherwise the same, the addition of a subcontractor with conflicts of interest to a team does not make the team ineligible to submit an SOQ and should not negatively affect the team's score if there are alternative team members available without conflicts regarding a given project. The conflict of interest scoring is based on the Availability Rule, which determines that a team is available to work on a particular case if any of the team members are available to cover the issue areas for the case. Adding a conflicted team member does not reduce the availability of the other team members. In fact, the inclusion of the subcontractor could add value to the team because the subcontractor will likely be eligible to work on the non-siting, non-designation tasks (Tasks 11 – 16), which are critical aspects of the Agreement.

Q5. Conflict of interest requirements may have changed from in the past and I just wanted clarification. In the past, no team member was able to work for any developer of any project that currently has an application with the Energy Commission. Is that still the case? How is the conflict of interest scored?

A5. *Under the rules in this RFQ, a team member can work for a developer with projects under review, or pending review, by the Energy Commission without making the team ineligible or unavailable to work on siting or designation assignments. However, the team member will be subject to the restrictions in the conflict of interest terms in the contract for work related to siting and designating transmission corridor zones.*

Under Conflict of Interest Rule 2, which is described on page 28 of the RFQ, a team member is considered unavailable to work on a siting or designation project if it has worked for the project developer in the last 12 months. In Rule 2, "contractor" may be used interchangeably with "team member."

See pages 29 and 30 of the RFQ for information on scoring conflicts of interest. The conflicts of interest scoring is based on the availability of the team, not the individual members, to work on siting and designation projects. Therefore, the team is considered to be available to work on a project as long as an adequate number of team members are available to cover the technical areas as needed for the project. Per the Statement of Potential Conflicts requirements starting on page 29 of the RFQ, the SOQ must state for each team member its conflicts of interest, state whether any restrictions exist based on the availability rule, and identify the alternate team member(s) that would work on any

project(s) that the team member is unavailable to work on. Based on this information, staff will determine how many projects the team is potentially unavailable to work on.

As indicated in the scoring criteria on page 2 of Exhibit A of the RFQ, the following points will be assigned based on the number of applications the team is unavailable to work on:

*0-3 applications: 60 weighted points
4-7 applications: 45 weighted points
8-11 applications: 30 weighted points
12-15 applications: 15 weighted points
16 or more applications: 0 weighted points*

Q6. Regarding conflicts of interest, on page 27 of the RFQ, section A, applying to work related to siting and designating transmission corridor zones, it says “the Energy Commission has determined that it is inappropriate for it to contract with a team that is also working for a developer who is submitting to the Energy Commission an Application for Certification.” Does this really mean what it says?

A6. *As contained in the answer to a prior question (above), this paragraph has been clarified to read as follows:*

The Energy Commission has determined that it is inappropriate for it to contract with a team that continues to enter into new contracts or working relationships with a developer who is submitting to the Energy Commission an Application for Certification for an energy facility or an application to designate a Transmission Corridor Zone (“TC Zone”).

Q7. In the RFQ it says there will be a discussion with the top three firms after the evaluation. Have you decided what format the discussion will take?

A7. *The discussion will be a presentation in the format of your choice. Each of the three top-scoring firms will make its own presentation in its own format.*

Q8. What types of tasks do you expect the contractor to perform to support the renewable energy development goals of the State?

A8. *Staff has not determined yet which tasks will require staffing of a contractor and which tasks we will be able to carry out on our own.*

Tasks 11 – 14, beginning on page 23 of 47 of the RFQ, will, in part, support Energy Commission staff activities to respond to the Governor’s Executive Order S-14-08, which directs the Energy Commission and other state agencies to carry out specific activities to support California’s renewable energy goals. The tasks will involve gathering data, such as reviewing existing studies and conducting field studies, developing permitting guidelines, reviewing other agencies’ procedures and consulting with other agencies like the California Department of Fish and Game

The Actions Required by Executive Order section on page 30 of Exhibit B of the RFQ describes the actions required by Executive Order S-14-08 related to Tasks 11 -14.

The Contractor Activities section on page 13 of the RFQ describes the kinds of activities the Contractor will perform to carry out the tasks in the Agreement, including the tasks to support the renewable energy development goals of the state.